

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Douglas P. Miller, Chair
Patrick O'Donnell, Committee Counsel
Small Claims and Limited Cases Subcommittee
Hon. Mary Thornton House, Chair
Cara Vonk, Subcommittee Counsel, 415-865-7669
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DATE: August 29, 2002

SUBJECT: New Optional Form, *Authorization to Appear on Behalf of Party (Small Claims)* (approve form SC-109) (Action Required)

Issue Statement

Currently there is no Judicial Council–approved form for the declaration that must be filed with the small claims court when an individual seeks to appear on behalf of a party to a small claims action. (See Code Civ. Proc., § 116.540.) Some courts have developed their own forms. Small claims advisors have suggested that a uniform statewide form would be a valuable addition to the Judicial Council's roster of small claims forms.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2003, approve a new optional form, *Authorization to Appear on Behalf of Party (Small Claims)* (form SC-109) to meet the requirements found in Code of Civil Procedure section 116.540 of the Small Claims Act, which permit specified persons to appear on behalf of a small claims party if a declaration is filed with the court that contains the required statutory statements.

The proposed new form is attached at pages 5–6.

Rationale for Recommendation

Under the Small Claims Act, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action except as permitted by the code. (See Code Civ. Proc., § 116.540, attached at pages 13–14.) The section lists various categories of parties who may be represented by others, including, among others, different forms of business entities, plaintiffs who are in the armed forces, and parties who are incarcerated. A declaration must be filed with the court that complies with specific statements required by that subdivision. (Code Civ. Proc., §116.540 (i).)

The committee started with a small claims form developed by the Superior Court of Orange County. The form was revised to add a separate category for persons appearing on behalf of a government agency or other public entity (item 4d) under Code of Civil Procedure section 116.540 (c) governing “a party who is not a corporation or a natural person. . . .” There was consensus that a separate category on the form for a government agency or other public entity could assist parties and the court in effectively processing public agency authorizations.

An option for a spouse seeking to appear on behalf of his or her spouse has been added near the end of the form (item 4i). The court must find that this would be in the interests of justice. (Code Civ. Proc., §116.540(j).) At the end of the form an option is provided for a person to request to appear on behalf of another party who needs assistance. A statement of reasons must be provided to support a finding that the party cannot present his or her claim or defense without assistance. (See item 5; Code Civ. Proc., §116.540(k).)

Comments From Interested Parties

Of the 16 comments received, five commentators (one State Bar attorney, two legal aid attorneys, and two small claims advisors) agreed with the form that circulated. No one opposed the form.

Eleven commentators (one judge, eight court staff, and two small claims advisors) agreed with the form if it is amended. Although amendments were offered, several persons made comments such as “great improvement!,” “it is long overdue,” and “the form is great, very well formatted, easy to read, easy to understand, excellent job.”

At least two commentators thought that the form should be mandatory. The committee agreed with others, however, who thought that the form should be optional. The committee would like to gain experience using the form to see if it is working well.

There was some concern that language on the form could be simplified to be more user-friendly as suggested by another commentator. In response, the committee simplified the statutory text in several places. In item 4c it also eliminated the word “duly” from the phrase “a duly appointed or elected officer or director” as unnecessary and possibly confusing for the small claims litigant. Although “duly appointed” means appointed in the regular course of business, the declaration also states “and do not solely represent the corporation in small claims court.” The committee felt that an appointment just for small claims expediency would be rare.

Because the form is an authorization to appear on behalf of another party, the committee included the following admonishment in item 1: “(An attorney may participate only as provided in Code Civ. Proc., § 116.530).” The committee was sympathetic to one commentator’s suggestion that this admonishment be stated negatively such as, “(In general, an attorney may not represent a party. See Code Civ. Proc., § 116.530),” because the present wording might create an unjustified apprehension that the opposing party will bring an attorney. However, the committee did not want to make a negative statement and could not agree on improved language. It recommends that the statement remain on the form as currently drafted.

At least three commentators wanted the form signed by the party authorizing the person to appear for them. The committee did not agree with this suggestion. The code does not require this and the person appearing must sign the declaration under penalty of perjury that he or she has the authority to appear on behalf of the party. Should the person signing not have that authority, the judgment would be invalid. The committee noted that some parties may be incapable of signing the authorization form, and others may not be available or able to be reached to sign the written authorization form if it were made a requirement. This could defeat the goals for small claims court of simple procedures and speedy resolution of small claims cases.

Another commentator suggested that Limited Liability Company (LLC) and Limited Liability Partnership (LLP) be included in the “Corporation” check box. The committee wanted to keep the form simple, noting that a person appearing for one of these entities would likely know which box to check.

A clerk was concerned that item 5 would open clerks to much questioning (such as “Can I appear for my brother?”). However, the form follows section 116.540(k), which allows a person to appear on behalf of another party if, in the court’s discretion, it appears that the person is needed to help a party who cannot properly present his or her claim or defense without that person’s assistance.

A chart summarizing the comments and responses is attached at pages 7–12.

Implementation Requirements and Costs

The new form is optional. Therefore implementation costs could result if a court decides to transition from a local form to the approved Judicial Council form. However, use of the new form in courts that do not already have a local form could help courts manage the declaration requirement under Code of Civil Procedure section 116.540 effectively.

Attachments

Code of Civil Procedure

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) A corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United States armed forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220 and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting

written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (h), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is appearing under subdivision (b), (c), (d), or (h), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(j) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(k) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(l) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

(State your name and address): TELEPHONE NO. : E-MAIL ADDRESS (Optional):	APPEARING FOR <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT FAX NO. (Optional):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		DRAFT-9
PLAINTIFF (Names): DEFENDANT (Names):		CASE NUMBER:
AUTHORIZATION TO APPEAR ON BEHALF OF PARTY (Small Claims)		

1. I am authorized to appear on behalf of
☐ Plaintiff (*name*):
☐ Defendant (*name*):
(An attorney may participate only as provided in Code Civ. Proc., § 116.530.)
2. My name is (*specify*):
3. My
a. ☐ title is (*specify*):
b. ☐ relationship to the party on whose behalf I am appearing is (*specify*):
4. I am appearing on behalf of (*check one box*):
a. ☐ **a corporation.** I am a regular employee or an appointed or elected officer or director of the corporation and do not solely represent the corporation in small claims court.
b. ☐ **a sole proprietorship.** I am qualified to testify about the identity and method used to prepare the business records that were made in the regular course of business at or near the time of the event. The claim can be proved or disputed by evidence of an account that makes up the business record and there is no other issue of fact in this case (See Evid. Code, § 1271.). I am a regular employee and do not solely represent the party in small claims court.
c. ☐ **a business that is not a corporation or sole proprietorship.** I am a regular employee or an appointed or elected officer or director or, in the case of a partnership, a partner of the business and do not solely represent the business in small claims court.
d. ☐ **a government agency or other public entity.** I am a regular employee or an appointed or elected officer or director and do not solely represent the government agency or public entity in small claims court.
e. ☐ **a plaintiff serving on out-of-state active duty in the United States armed forces.** The plaintiff was assigned to an out-of-state duty station after his or her claim arose and the assignment is for more than six months. I am not being compensated for appearing. I have appeared in small claims court on behalf of others no more than four times during the calendar year.
f. ☐ **a party incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility.** I am not being compensated for appearing. I have appeared in small claims court on behalf of others no more than four times during the calendar year.
g. ☐ **a defendant nonresident owner (*out of state or country*) of real property.** I am not being compensated for appearing. I have appeared in small claims court on behalf of others no more than four times during the calendar year.
h. ☐ **an owner of rental property.** I am a property agent under contract with the owner to manage rental of the property. The claim relates to the rental property. The owner has retained me principally to manage the rental of that property and not to represent the owner in small claims court. I am not employed to solely represent the owner in small claims court.
i. ☐ **my spouse.** I have sued or been sued with my spouse on a joint claim. My spouse has given me consent to represent him or her in small claims court. I request the court to find that the interests of justice would be served by having me appear and participate on behalf of my spouse.

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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5. ☐ I am appearing on behalf of **another party** not listed under item 4. I request that the court, in its discretion, allow me to assist a party who cannot properly present his or her claim or defense without my assistance. (*State why party needs your assistance*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Comments for SPR02-18
Small Claims: New Optional Form, *Authorization to Appear on Behalf of Party* (Small Claims)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Andrea Agloro Executive Director Sonoma County Legal Aid	A	N	. . . agree with proposed changes.	
2.	Mia A. Baker Legislative Subcommittee Chair The State Bar of California Standing Committee on the Delivery of Legal Services	A	Y	. . . the Committee wishes to extend its thanks to the Judicial Council for your efforts in promulgating these proposals. . . . the Standing Committee reviewed, approved, and strongly supports [this proposal].	
3.	Hon. Ronald Lawrence Bauer Chair Rules and Forms Committee Superior Court of California, County of Orange	AM	Y	. . . agree with proposed changes. The Rules and Forms Committee of the Superior Court of Orange County reviewed the proposal and approved the following comments submitted by staff, Virginia Davidow, Director, Civil Limited Operations. Suggest changing the word “duly” to “the” where appropriate. Add to end of form, after #5: I authorize the above-named party to appear on my behalf. (Signature required if box b, c, e, f, g, h, or i is checked.) Date: _____	The committee agreed to delete the word “duly” and substituted “an” in each instance to read, for example, “I am <u>an</u> appointed or elected officer or director of the corporation. . . .” There were several commentators who suggested that the plaintiff or defendant be required to sign the form stating that the person appearing on behalf of the plaintiff is authorized to appear on the plaintiff’s behalf. The committee did not agree with this suggestion. There was consensus that this is not necessary and is not required by

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Comments for SPR02-18

Small Claims: New Optional Form, *Authorization to Appear on Behalf of Party* (Small Claims)

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				(type or print name) (signature of named party)	the code. The person appearing is signing the declaration under penalty of perjury that he or she is authorized to appear..
4.	Julie Camacho Court Program Supervisor Superior Court of California, County of Ventura	AM	N	. . . agree with proposed changes only if modified. Currently parties have been submitting this declaration on a sheet of paper attached to the plaintiff's claim when filed. This form will be very helpful in making sure that the requirement is met. My recommendation is that this form be made mandatory since Code of Civil Procedure section 116.540 states that the court shall require a declaration be filed at the time of the Small Claims hearing.	The committee would like the form to be used for a period of time to see if it is working well and whether adjustments should be made. Language on the form may need to be simplified so that it is more user-friendly as suggested by commentator 16. The form could then be recirculated for comment for mandatory use.
5.	Myrna Cohen Small Claims Advisor District Attorney's Office Santa Clara County	A	N	. . . agree with proposed changes. Great improvement!	
6.	Judith Coker Staff Attorney – Small Claims Advisor Superior Court of California, County of San Diego	AM	N	. . . agree with proposed changes only if modified. First – I think the form is great. Very well formatted, easy to read, easy to understand. Excellent job. A few suggestions at: (a) #1 (“An attorney may participate only . . . ”), would be less confusing to laypersons if it were stated in the negative. Such as, “In general, an attorney may not represent a party. See Code of Civil Procedure section 116.530.” The problem with the present wording is that people will see that and fear that the opposing party will bring an attorney. This is a common fear of many litigants.	(a) The committee is sympathetic to the problem, but could not agree on alternative language. In this case the person who is going to appear for the plaintiff or defendant is filling out the form; it is not being served on one of the parties. This will serve as a reminder to an attorney that he or she may not participate except in limited circumstances.

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				<p>(b) Re: 4a, c, d. I think these items should read “I am a regular employee or officer or director of the corporation and do not . . . court. See Code of Civil Procedure section 116.540.” This succinctly conveys who can represent the corporation and gives a reference to the code. If it’s an unusual situation, they will know to investigate.</p> <p>(c) I believe the form should be optional. That way, the commissioner can decide whether to require it for a particular case if he or she wants. If it’s required the commissioner may be perfectly satisfied that the representation is appropriate and all parties are present, but the commissioner would have to continue or dismiss the action. Or even enter a default judgment against a corporation. If it is mandatory, I think the plaintiff’s claim form should be changed to specifically state that.</p>	<p>(b) The committee disagreed with the suggestion. It felt that the words “appointed or elected” in the sentence “I am a regular employee or an appointed or elected officer or director” has special significance, especially when informing persons not sophisticated in the law about corporate formalities. It also tracks the language of the code. The statute is referenced at the bottom of the form.</p> <p>(c) The committee agrees that the form should be optional until we have experience using the form. See also response to commentator 4, above, who thought the form should be mandatory.</p>
7.	Clemmie Cooper Small Claims Adviser Mediation Center of San Joaquin County	A	N	<p>. . . agree with proposed changes.</p> <p>This form should be mandatory. Instead of using the phrase “duly appointed” it will probably be clearer or more understandable if “given permission” was used instead.</p>	The committee did not agree that the form should be mandatory. See response to commentator 4, above. The committee decided to use “an” instead of “duly.” See response to commentator 3, above.
8.	Sue DuFour	A	N	. . . agree with proposed changes.	

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Supervising Legal Clerk II Superior Court of California, County of Stanislaus				
9.	George Ducich Forms and Rules Coordinator Superior Court of California, County of San Diego	AM	N	<p>. . . agree with proposed changes only if modified.</p> <p>Request the form be modified to add the signature of the person authorizing the party to appear for them in the small claims action.</p>	The committee did not agree with this suggestion. See response to commentator 3, above.
10.	Linda Krolnik Legal Process Clerk II Limited Civil/Small Claims Superior Court of California, County of Orange	AM	N	<p>. . . agree with proposed changes only if modified.</p> <p>Since we are creating the form for small claims, I did not see where you would check off the box for the Limited Liability Company (LLC) or the Limited Liability Partnership (LLP).</p> <p>Small claims is the people's court and most people don't realize that the LLC and LLP are part of the S-corporation status.</p> <p>I would like to see the corporation box include the terms LLC and LLP.</p> <p>The statement "I have appeared in small claims court on behalf of others no more than four times during the calendar year" should be bold. What if that person has appeared over four times for this company or business or individual? Code of Civil Procedure section 116.540 does not address appearing four times.</p>	<p>The committee is looking into this suggestion. Code of Civil Procedure section 116.130(e) defines person to include limited liability company or other entity. A statutory amendment may be needed. A person who is appearing for one of these entities will likely know which box to check (a. or c.).</p> <p>The committee disagreed that this statement should be in bold because it may be confusing, especially when there is no enforcement provision in the statute. The clerk could refuse to accept the filing if the person has appeared more than four times.</p>
11.	Kathy Maderos Supervising Legal Clerk II Superior Court of California, County of _____	AM	N	<p>. . . agree with proposed changes only if modified.</p> <p>It is unclear why this form would be of any importance in situation 4a since a corporate declaration is filed _____ unless this would take the place</p>	There is no longer a requirement that a declaration by the corporate board of directors be on file with the court. This

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				<p>declaration is filed—unless this would take the place of a corporate declaration.</p> <p>#5 seems too vague. This will open clerks to much questioning (such as “Can I appear for my brother?”). The form carries only the signature of the person to appear. I would think it necessary that the plaintiff/defendant agree by signing also.</p> <p>If person files this, since no prior approval by commissioner/judge is obtained, is it determined at a hearing if the person shall represent? It states: “I request the court, in its discretion. . . .”</p>	<p>directors be on file with the court. This form informs the court that the corporate representative is authorized to appear on behalf of the corporation.</p> <p>The statute authorizes a person to assist a party who cannot properly present his or her claim or defense in the discretion of the court. The form will make the public aware that this option is open to them and it will be up to the judge to decide at the hearing, after questioning, whether to allow it. Please see response under comment 3, above, regarding the signature issue.</p>
12.	Sandra Mason Director of Civil Operations Superior Court of California, County of San Luis Obispo	AM	N	<p>. . . agree with the changes only if modified.</p> <p>#4b is confusing. Should it read: “I am qualified to testify to the business records of the party I represent. This claim can be proved or disputed by evidence of an account that makes up the business record as defined in Evidence Code section 1271, and there would be no other issue of fact in this case. I am a regular employee and do not solely represent the party in small claims court.”</p>	The committee agreed and reworded 4b to read “I am qualified to testify about the identity and method used to prepare the business record.”
13.	Lee Silva-Combs Deputy Executive Officer Superior Court of California, County of Monterey	AM	N	<p>. . . agree with proposed changes only if modified.</p> <p>The form sounds like it will be signed by the person who will be appearing in court. The form should be signed by the corporation’s officers or by the person on whose behalf the person is appearing for.</p>	The committee disagrees. See response to commentator 3, above. If there is a question about the authority of the person appearing, the court has authority to inquire further.
14.	Susan Townsend	A	N	. . . agree with proposed changes.	

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	Directing Attorney Yuba Sutter Legal Center				
15.	Richard K. Uno Managing Attorney Small Claims Advisory Clinic County of Sacramento	AM	N	. . . agree with proposed changes only if modified. I would add a warning in a box indicating that an individual may be represented by another only in rare circumstances.	The committee disagrees. Item 5 follows the statutory language. The person must show that the party cannot properly present his or her claim without assistance.
16.	Charlene Walker Division Manager Superior Court of California, County of Sacramento Carol Miller Justice Center	AM	Y	. . . agree with proposed changes only if modified. Approve of the idea behind this form; it is long overdue. It does not appear that the committee recognized that 100 percent of the litigants in small claims cases appear in pro se. Thus, the wording of this form needs to be simplified to meet the needs of the target audience. References to things such as “the business record as defined in Evidence Code section 1271. . .” need clarification. The language is not in keeping with the spirit of making forms utilized by pro se litigants user-friendly.	The committee is sensitive to concerns that the forms be user-friendly and is familiar with the work of the Access and Fairness Advisory Committee. Our goal is to revise the form after we have some experience with its use. See also response to commentator 4, above.

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